COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Western Massachusetts Electric Company for approval of its Transition Charge Reconciliation filing for the period January 1, 2002 through December 31, 2002.	)	D.T.E. 03-34

INITIAL BRIEF OF
WESTERN MASSACHUSETTS ELECTRIC COMPANY

I. PROCEDURAL HISTORY

On March 31, 2003, Western Massachusetts Electric Company ("WMECO" or "Company") submitted its transition charge reconciliation filing to the Department of Telecommunications and Energy ("Department"). The matter was docketed as D.T.E. 03-34. WMECO's filing included the testimony of Jeffrey R. Cahoon, Director of Revenue Requirements for Northeast Utilities Service Company ("NUSCO"), an affiliate of WMECO, pertaining to transition charge matters. In addition, WMECO's filing included data on WMECO's Standard Offer/Default Service and Transmission reconciliation mechanisms, as ordered by D.T.E. 02-77.

Subsequently, on July 15, 2003, the Department issued its decision in a prior WMECO transition charge reconciliation filing, D.T.E. 01-36/02-20 Phase II. In that decision the Department requested more information from WMECO in its transition charge filings regarding the Standard Offer/Default Service and Transmission reconciliation

mechanisms (pp. 6-7). The Department stated that WMECO's filings in these two areas should mirror those submitted to the Department by other major electric companies in the Commonwealth (p. 7).

In response, WMECO resubmitted its transition charge reconciliation filing for 2002 on September 22, 2003. This filing contained the testimony and supporting materials provided earlier by Mr. Cahoon, and included additional information on the Standard Offer/Default Service and Transmission elements. Robert A. Baumann, Director, Revenue Regulation & Load Resources for NUSCO submitted testimony and exhibits on the Standard Offer/Default Service reconciliation. Paula M. Taupier, Manager, Transmission Regulatory Policy & Planning for NUSCO, submitted testimony and exhibits on the Transmission reconciliation.

Hearing on this matter was held in the Department's offices on February 10, 2004. The Attorney General and the Western Massachusetts Industrial Customer Group ("WMICG") were the only parties to intervene. In addition to witnesses Cahoon, Baumann and Taupier for WMECO, David J. Effron submitted pre-filed testimony for the Attorney General and appeared at the February 10, 2004 hearing.

At the hearing, the prefiled testimony of Paula Taupier, Robert Baumann, Jeffrey Cahoon, David Effron and associated exhibits were entered into the record (Exhs. WM-PMT, WM-PMT-1; Exhs. WM-RAB to WM-RAB-5; Exhs. WM-JRC to WM-JRC-4; and Exh. AG-1, respectively). In addition, the Company's responses to the Department's one set of data requests (DTE-1-1 to 1-13), the Company's responses to the Attorney General's two sets of data requests (AG1-1 to 1-24 and AG2-1 to 2-8), and the Attorney General's responses to the Company's one set of data requests (WM1-1 to 1-21), were accepted into

the record. Finally, WMECO's responses to Record Requests 1, 2, and 3 (Exhs. RR-1, 2, and 3) are also part of the record.

II. SUBSEQUENT TO HEARING ONLY TWO POINTS IN WMECO'S FILING REMAIN AT ISSUE

Intervenors have not raised any issues pertaining to the Standard Offer/Default Service and Transmission reconciliations and, as far as can be determined, no issue was raised at hearings on these reconciliations. Accordingly, the Department should accept in their entirety the testimony and exhibits set forth by witnesses Baumann and Taupier.

With respect to transition costs, Mr. Effron raised four issues in the Attorney General's pre-filed testimony. One of these pertains to purchased power sales (Exh. AG-1, pp. 5-6). At hearing, Mr. Effron acknowledged that WMECO's position on its purchased power obligations was sufficiently supported and withdrew the Attorney General's opposition to WMECO's filing on this point (Tr., p. 56). A second point in controversy involved the Gross Revenue Conversion Factor (Exh. AG-1, pp. 6-8). This point was resolved when Mr. Cahoon corrected the Gross Revenue Conversion Factor along with other relatively small-impact calculations. *See* Tr., pp. 23-26; Exh. WM-JRC-4; Exh. RR-3, p. 1.[1]

The resolution of the purchased power sales issue and the Gross Revenue Conversion Factor issue leaves only two remaining issues in controversy: (1) how to calculate carrying charges, and (2) whether to accelerate the amortization of enhanced transition cost recoveries against transition cost obligations (that is, whether to set off all moneys collected against the balance of costs owed).

[1] *See* Exh. RR-3 (supplemental) for an explanation of how the page numbering in Exh. RR-3 corresponds to Exh. WM-JRC-3.

III. WMECO'S METHOD OF CALCULATING CARRYING CHARGES IS CONSISTENT WITH PRECEDENT AND SHOULD BE FOLLOWED.

In calculating the over- or under-recovered balance of transition costs, WMECO has adopted the procedure approved by the Department in prior transition charge reconciliation proceedings. *See* Exh. WM-JRC-3, p. 1. WMECO has not included the balance of carrying charges accrued in prior years. Tr., p. 30. Mr. Cahoon stated WMECO's method of calculating carrying costs is consistent with that approved by the Department in D.T.E. 00-33 and D.T.E. 01-36/02-20. Exh. AG2-2.

The Attorney General's witness, conversely, claims that the over- or under-recovered balance should be included in the carrying charge calculation. The difference between the Company's method and the Attorney General's method for year 2002 is approximately $188,000. Exh. AG2-2. While the Attorney General's witness now claims his new method is better than the old one, he can cite no outside authority for such a change (*see* Exh. AG-1, p. 4). In addition, the Attorney General's witness has been engaged by the Attorney General in the previous two transition charge reconciliation proceedings, D.T.E. 00-33 and D.T.E. 01-36/02-20, and has never previously advocated changing the carrying charge calculation. Exhs. WM1-14, WM1-15.

As far as can be determined, the only element that differs in this proceeding from earlier ones is that the use of the Attorney General's method now would result in lower recoveries by the Company (or at least he claims it would, beginning in 2003). Exh. AG-1, pp. 4-5. WMECO believes that a method of recovery should be consistent and should not be based on which party benefits or loses in a particular year's calculation. Accordingly,

WMECO's method of calculating carrying charges, which is consistent with all previous transition charge reconciliations approved by the Department, should be adopted.

IV. WMECO SHOULD BE ALLOWED TO CREDIT BACK TO CUSTOMERS THE ACCELERATED COLLECTION OF TRANSITION COSTS.

A. Background

The concept motivating WMECO's position on the accelerated amortization of transition costs is very simple. WMECO proposes that any revenues that are recovered via the transition charge over and above the scheduled revenue requirements in any particular year be credited immediately to customers by reducing the unrecovered transition costs. Exh. WM-JRC, pp. 7-9. WMECO believes that this position is entirely consistent with the Electric Utility Restructuring Act (Chapter 164 of the Acts of 1997) and the Department's practice, and any other position is flawed and should not be seriously considered.

B. Lower Standard Offer Prices Have Led to the Positive Result of Enhanced Transition Cost Recovery in 2002 and 2003.

On November 28, 2001, the Company submitted a rate filing to the Department for calendar year 2002 proposing new Standard Offer rates and a new transition charge in compliance with the overall rate cap then in place (the statutory rate cap remains in place until February 28, 2005). In the process of setting rates, the transition charge is the residual charge. Tr., pp. 29, 44. That is, distribution rates, transmission rates, and standard offer rates are fixed (along with certain other charges). The remaining cap room can be used to collect, and thus retire, transition costs. *Id.* In years when Standard Offer rates are high, there is very little cap room and the transition charge may have to be set at a low level. In years when the Standard Offer rate is relatively low, the transition charge can be higher and still allow for rate continuity. Tr., p. 29. All things considered, having a higher transition

charge is a positive development because it means that customers are paying off transition costs sooner and, thus, getting to the point of extinguishing that charge on their bills. Tr., pp. 42, 44. One goal of the Electric Utility Restructuring Act is to move readily to a point in time where transition cost obligations have been extinguished. *See* Preamble to the Electric Utility Restructuring Act, Section 1 of Chapter 193 of the Acts of 1997.

The Department approved WMECO's November 28, 2001 rate change filing in D.T.E. 01-101 on December 27, 2001. The filing approved by the Department contained Standard Offer prices that had been procured at a low-enough level to allow WMECO to collect a relatively high transition charge. Tr., pp. 28-29. The effect of the transition charge was favorable in that revenues received exceeded the scheduled revenue requirement by $28,190,000, which can be used to reduce the balance of transition costs. Tr., p. 26; Exh. RR-3, p. 2.

The rate for 2003 followed a similar pattern in that Standard Offer prices were low and the Company was able to propose, and the Department approve, a relatively high transition charge of 1.424 cents per kilowatthour. Tr., p. 43. Mr. Cahoon testified that this should result in approximately another $25 million extra to be credited against the balance of transition costs.[2] Tr., p. 43. Given the Company's relatively low balance of fixed transition costs, the accelerated amortization of transition costs will mean that WMECO's customers will be quite far down the path of paying off their transition cost obligation. Exhibit WM-JRC, p. 12, shows the balance as of December 31, 2002, which would be reduced further as of December 31, 2003.[3]

---

[2] The enhanced recovery in 2003 is not at issue in this proceeding. WMECO will file its 2003 transition charge reconciliation filing in late March 2004.

[3] The goal of paying down transition costs faster than hoped for can not always be realized, however.

In sum, the transition charge approved by the Department in D.T.E. 01-101 allowed the collection of a larger sum than estimated when the amortization of these costs was originally scheduled. Tr., p. 44. This is a positive development and does not mean that customers are being overcharged. Tr., p. 44. On the contrary, it means that customers are that much closer to extinguishing any charge for transition costs. Providing for enhanced recovery of transition costs and accelerated amortization of these costs is wholly consistent with public policy, customers' interests and the Company's interests. Apart from the statutory mandate discussed below, the Department should allow accelerated amortization for all transition costs.

C. Accelerated Amortization of Transition Costs Are Mandated by the Restructuring Act.

Section 1G(e) of Chapter 164 of the General Laws, added by the Electric Utility Restructuring Act of 1997, squarely addresses the issue of the accelerated amortization of transition costs. This subsection states:

> The department is hereby authorized and directed to allow any approved transition costs to be recovered from ratepayers through a non-bypassable transition charge collected by the distribution company providing transmission or distribution service to such ratepayers. For each electric company submitting requests to the department for the recovery of transition costs, the department shall impose a cap upon the level of the transition charge, which shall remain in effect until altered upon action by the department; provided, however, that in no instance shall such charge be adjusted to reflect inflation. Any transition charge collected shall be used for the specific purpose of paying for transition costs as identified pursuant to the provisions of subsections (b) of this section. **Amortization of transition cost recovery may be accelerated relative to recovery of such costs assumed in current rates,** but in no case shall amortization result in an increase in rates for any class of customer of an electric company over rates in effect as of December 31, 1997, for that company. The department shall, on a case by case basis, determine the date upon which there shall be no allowance

---

Standard Offer prices for 2004 have increased, necessitating a reduction in the transition charge for 2004. Tr., p. 44.

> for transition cost recovery in any rate charged by any transmission or distribution company [emphasis added].

Thus, the Company's proposal is not a matter on which the statute is silent. It is not a matter in which the Department must weigh parties' arguments without the benefit of legislative direction. Rather, it is a matter that the Legislature considered important enough to give direction to the Department through explicit language in the Electric Utility Restructuring Act. The Legislature, after considering the matter, anticipated the situation in which transition cost recovery is more than expected, and allowed electric companies to employ accelerated amortization. The Company's accelerated amortization proposal is in full compliance with the statute.[4] Where a statute, such as this one, is clear on its face, it must be construed in accordance with its plain meaning. *Foss v. Commonwealth*, 437 Mass. 584 (2002); *Commissioner of Revenue v. Franchi*, 423 Mass. 817 (1996); *Marco v. Green*, 415 Mass. 732 (1993).

While the Legislature has made it perfectly clear that transition costs can be accelerated, there is absolutely no hint in the statute, contrary to the positions advanced by Attorney General, that: (1) only transition costs earning a return may be the subject of the accelerated amortization, or (2) more money should be credited toward transition costs than is collected from customers. *See* Exh. WM1-21; Exh. AG-1, pp. 10-11. The Legislature stated that the recovery of transition costs could be accelerated; it did not state that only certain transition costs could be accelerated. Nor did it state that some transition costs were worth more than others. Indeed, if an electric company had no costs earning a return, the Attorney General's position would render the statutory language a nullity, an untenable

result. The silence of the statute on these contentions by the Attorney General is damning and the Department should reject the Attorney General's unsupported and illogical theories.

Accordingly, based on General Laws, chapter 164, section 1G(e), the Department should approve WMECO's proposal to accelerate the amortization of transition costs.

D. The Department Should Explicitly Adopt the Principle that Accelerated Amortization Is Applicable for All Transition Costs, Both Those Earning a Return and Those Not Earning a Return, But WMECO Has No Objection to Applying Accelerated Amortization First to Those Costs Earning a Return.

As indicated above, accelerated amortization should be applicable to all transition costs, whether the costs earn a return or not. However, WMECO has also stated that it does not oppose the application of accelerated amortization for 2002 first to those costs which earn a return at the Company's cost of capital. In fact, Mr. Cahoon recommended that the accelerated amortization be applied first to Millstone Unit 2 costs and Financial Accounting Standards ("FAS") 109 costs[5], both of which earn a return in whole or part. Exh. AG-2-7; Tr. pp. 33-34.

The unrecovered Millstone Unit 2 costs amount to $7,090,000 million as of December 31, 2002. Exh. AG-2-7; Exh. RR-3, pp. 1, 20, 22.[6] The Attorney General agrees that the Millstone 2 unit fixed costs earn a return and agrees with the Company that accelerated amortization of these costs is appropriate. Exh. AG-1, p. 9.

With respect to FAS 109, the Attorney General appears to contend that accelerated amortization is appropriate only if the net fixed cost component earning a return is also

---

4 No one has claimed that the effect of the amortization would be to increase rates above 1997 levels. The enhanced rate levels have already been approved by the Department as consistent with the rate cap.

5 FAS 109 pertains to deferred income tax.

6 Page 20 in Exh. RR-3 is redacted and the $7,090,000 million only appears on the confidential page in the box labeled "Application of Over-recovery." The $7,090,000 million figure and the other figures in the box

reduced by the amount of accelerated amortization. *Id.* The Attorney General is mistaken, however, because as Mr. Cahoon explained, only the net FAS 109 balance (FAS 109 regulatory asset minus the FAS 109 liability) and not the entire FAS 109 regulatory asset earns a return. Tr., p. 52. As of December 31, 2002, the net FAS 109 balance was $14,043,000 million, as shown on Exh. WM JRC-3, p. 11; Exh. RR-3, p. 20, (column titled "Decelerated FAS 109 Earning a Return for Company for 2002") (confidential page).[7]

Mr. Cahoon also explained that any amortization of the FAS 109 regulatory asset results in a reduction to the FAS 109 liability because the amortization is not deductible for tax purposes. A proportionate amount of the tax gross-up (FAS 109 liability) turns around and comes due. Tr., p. 33. Therefore, the accelerated amortization of the FAS regulatory asset will reduce the net fixed cost component earning a return, but not on a dollar for dollar basis. In Exh. RR-3, Mr. Cahoon shows that applying $21,100,000 of the enhanced recovery to the FAS 109 regulatory asset (Exh. RR-3, p. 13) reduces the balance that earns a return by $12,262,000 million. Tr., p. 32-33; Exh. RR-3, p. 20 (column titled "Decelerated FAS 109 Earning a Return for Company for 2002", and the box labeled "Application of Over-Recovery") (confidential).[8] Accordingly, under WMECO's proposal $19,352,000 million ($7,090,000 million plus $12,262,000 million) of the $28,190,000 million enhanced recovery will end up being credited to costs earning a return.[9]

---

are not confidential. Exh. RR-3, p. 20, corresponds to Exh. WM-JRC-3, p. 11 (*see* Exh. RR-3 (supplemental)).

[7] The Decelerated FAS 109 earning a return for 2002 is not confidential.

[8] As indicated above, the figures in the box labeled "Application of Over-Recovery" on page 20 are not confidential.

[9] Looking forward, Mr. Cahoon suggested that the approximately $25 million of enhanced recovery in 2003 should be applied against remaining FAS 109 balances, FAS 106 balances (which earn a return at less than the Company's cost of capital), the Department of Energy D&D balance and the prior spent nuclear fuel balance. Tr. p. 45; *see* Exh. RR-3, p. 13 for balances. FAS 106 pertains to post-retirement benefits other than pensions.

In sum, WMECO strongly disagrees that there can be any limitation on the type of costs subject to accelerated amortization. The Company's proposal applies the entire $28,190,000 enhanced recovery against the unrecovered transition costs and specifically recommends the enhanced recovery be applied against those unrecovered transition costs that earn a return in whole or in part. Should the Department adopt this procedure for 2002, the Millstone Unit 2 regulatory asset would be amortized in its entirety as of December 31, 2002, and the FAS regulatory asset would be reduced by approximately 65 percent. Exh. RR-3, p. 13.

V. CONCLUSION

WHEREFORE, for all of the foregoing reasons, the Department of Telecommunications and Energy should: (1) approve the recovery of Western Massachusetts Electric Company's transition charge reconciliation costs set forth in Mr. Cahoon's testimony and exhibits (Exh. WM-JRC and attachments), as amended in Exh.WM-JRC-4, Tr., pp. 23-26 and Exh. RR-3; and (2) approve Western Massachusetts Electric Company's Standard Offer/Default Service reconciliation and the Transmission reconciliation.

Respectfully submitted,

WESTERN MASSACHUSETTS ELECTRIC COMPANY

Stephen Klionsky, Esq.
101 Federal Street, 13th Floor
Boston, Massachusetts 02110
617/748-5140 Telephone
617/748-5151 Telecopier
klionsh@nu.com

March 10, 2004